IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 9425 of 2005

Shaikh Mukhtar Ali Waris Ali Shaikh ..Petitioner

vs.

Shaikh Sabit Ali Waris Ali Shaikh ..Respondent

Shri N.R.Bubna for petitioner.

CORAM: S.B.MHASE J.
10th February, 2006

P.C.

1. Heard Shri Bubna, learned counsel appearing for the petitioner.

2. The petitioner is the original defendant from Reg.Civil Suit No.1736 of 2003 pending before Civil Judge, Jr.Dn., Pune. It is a suit for injunction filed by the respondent claiming that the respondent is in possession of the suit property. In the said suit the petitioner has appeared as the defendant and has filed written statement contending that the defendant is in possession of the suit property. In view of the rival claims made by both sides in respect of possession of the property, the petitioner submitted an application to appoint the Commissioner to

ascertain as to who is in possession of the said property. The said application is rejected. Therefore, this petition. This Court finds that the application has been rightly rejected. To collect the evidence it is the responsibility of the parties. The respondent will be eligible to prove his possession by leading appropriate evidence. It will be equally permissible for the petitioner to prove his possession over the suit property and for that purpose both sides may lead appropriate evidence and the Court can come to the conclusion on the basis of the preponderance of the possibilities as to who is in possession of the suit property. The court machinery cannot be used for the purpose of collection of evidence is a settled principle of law. The application is, therefore, rightly rejected by the court below. No interference is thus called for. Petition is rejected.

(S.B.MHASE J.)